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ABSTRACT

This handbook is designed to help women facing child custody disputes during or after divorce. To assist attorneys, citations to cases and statutes are included. Because this handbook is intended for distribution in the Washington, D.C. area, relevant laws and practices of the District of Columbia, Maryland, and Virginia are given. Custody arrangements (maternal with visitation rights, split, joint, and paternal) are described, the impact of custody disputes on children is considered, and steps in hiring a lawyer are given. The decision to separate, choices to make at the time of separation, and consequences of those choices are considered. Issues in negotiating a separation and settlement agreement are explored. Problems to be faced before a custody trial (temporary custody, preparing a case) and during a trial are discussed. The standards judges use in deciding custody are explained and reasons for mothers losing custody are described. The process of appealing a decision is reviewed and information is given on when custody can be changed. A chapter on special topics looks at the unique problems faced by battered women and by lesbian mothers, and examines the issues of mediation, child snatching, child sexual abuse, and the economics of divorce. Appendices contain lists of regional contacts for mothers without custody, organizations for lesbian mothers, and sources of further information. (NRB)

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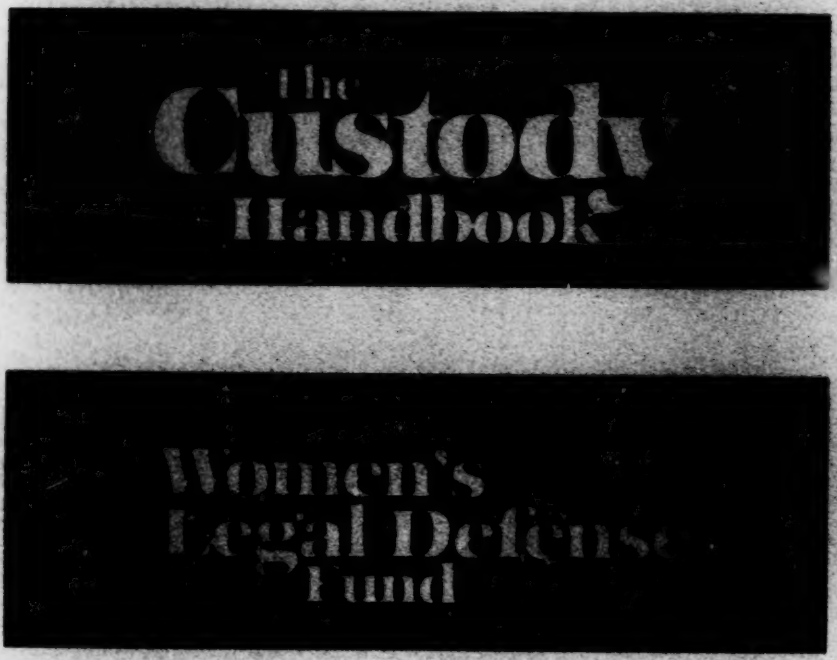

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The Custody Handbook
A Woman's Guide to Child Custody Disputes

Women's Legal Defense Fund

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Introduction

This handbook can help women facing disputes involving custody of their children, and the attorneys representing those women. A dispute over custody can arise between a husband and wife at the time of divorce, between ex-spouses after custody was agreed upon at the time of divorce, or between a mother and a third party other than the father, usually a relative. This handbook will be useful to mothers in any of these situations. Although this handbook often refers to the opposing party as the husband, unless otherwise stated the information is pertinent as well if he is a former husband or if he is the father of the children but was never married to the mother.

Most custody determinations are made by the parties themselves by agreement, and most of those agreements provide that the mother will have custody. This handbook is designed for those situations in which both parents request custody of the children. Often when both parties initially request custody they nonetheless reach an agreement before trial; in fact, only a very small percentage of custody determinations are made by a judge. Although this handbook is geared especially toward those cases which result in a trial, it will be helpful in any situation in which custody starts out as a contested issue, even if an agreement is later reached. This handbook can also be useful if there is agreement that you will have custody but very strong disagreement concerning the amount of visitation your husband will have. Such disputes can escalate into custody disputes, either now or in the future.

You may believe that you cannot lose custody of your children unless you are an unfit mother. This is not true, although many people share this misperception. Custody is decided on a sex neutral basis, with no preference for the mother. While it is true that from about 1920 to about 1970, all states followed the "tender years presumption" and awarded custody of young children to the mother unless she was unfit, this presumption no longer exists. A judge will award custody based on his or her determination of what is in the best

interests of the children. (See "Standards Judges Use in Deciding Custody".)[1/] This handbook will help explain what that will mean for your situation. As you go through the difficult period ahead, it may be some small comfort to know that you are not alone; all over the country women are facing contested custody disputes.

For many people, the time of divorce is the first contact ever with lawyers and the legal system. Because separation and divorce can create a financial and emotional upheaval, it is a particularly difficult time to have to cope with an unfamiliar and often mysterious or hostile process. This handbook is designed to prepare you for all of the steps involved in a custody dispute, from deciding what you want and hiring a lawyer to negotiating an agreement or litigating in court, with each part of the litigation process explained in detail. You need to be aware, however, that each custody case is a unique situation and that no general advice can be a substitute for representation by a qualified attorney.

The laws concerning custody and related matters do vary from state to state. Court practice and procedure may even vary from county to county. Because this handbook is intended for distribution principally in the Washington, D.C. metropolitan area, the laws and practices of the District of Columbia, Maryland and Virginia are included where appropriate. To assist attorneys in their research, citations to cases and statutes are included,by chapter, in the "References" section at the end of the handbook. Anyone with

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[1/]Contrary to popular belief, women have not always been the preferred custodians of their children. Until the last half of the 19th century, fathers were entitled to custody of their children upon divorce or separation as a matter of paternal right. One of the early demands of the "first wave" of the feminist movement in the mid 19th century was the right to keep custody of children upon divorce. The courts began to change towards the end of the century, although when women were first able to obtain custody they were not entitled to any child support. Also, in many states, there was a presumption that children who were no longer of "tender years" should be in the custody of their father, who was considered better able to prepare them for labor and education.

legal training wishing to adapt this handbook for use in other states should find it easy to research local law and practice and make changes where appropriate.

Thinking About Custody:
How Do You Decide What You Want?

Getting a divorce means that some arrangements have to be made about your children. The court order will make a provision for custody of the children, which will affect where the children live and who has the right to make decisions about them. These are the options:

Sole custody with visitation rights: This is the most common arrangement in D.C., Maryland and Virginia, as well as in many other states. Under this arrangement, all the children live with one parent, who has custody of them. With custody goes the right to make decisions about the children's upbringing. The parent who does not have custody almost always has visitation rights. This is the right to have the children for specified periods of time. The term "reasonable visitation rights" often means every other weekend, half of school holidays, and several weeks in the summer. It can include one weekday evening each week or other visiting times. If you can agree on a custody/visitation arrangement you can structure visitation as you agree on it. If the judge decides custody/visitation, s/he can establish any visitation schedule s/he considers appropriate, but s/he is likely to order some variation of "reasonable visitation rights" as described above. The parent with custody is entitled to receive child support from the non-custodial parent.

Some agreements grant "reasonable visitation rights" without specific delineation of when visitation will take place. Others set out in detail, sometimes down to the hour, the frequency and duration of visitation. A general provision for visitation allows maximum flexibility and is better suited for parents who are able to work out details amicably. Specific provisions may reduce this flexibility, but they also reduce the likelihood of ongoing disputes concerning the amount and times of visitation.

Split custody: This means that the children are divided so that, for example, one lives with the mother and one lives with the father. This is a very unusual arrangement. Judges do not customarily believe it is good for children to be separated from one another. Occasionally, however, such as when there is a big difference in age between the children or when the children have each developed a primary relationship with a different parent, split custody is appropriate. Each parent will have visitation rights with the children not in his/her custody.

Joint custody: The term "joint custody" gets a lot of media attention. Joint custody, however, does not have one specific meaning. In fact, in D.C., Maryland and Virginia there is no legal definition of joint custody. It is useful to think of joint custody as two very different arrangements: joint physical custody and joint legal custody.

Joint physical custody: Under this arrangement the children live in both parents' homes. Usually the time spent in the two homes is roughly equivalent, although the schedules can vary greatly. Sometimes the children will switch homes each week, or in mid-week; sometimes they will switch every month or every six months. Sometimes they will spend Thursday to Monday every other week with one parent during the school year and also live with that parent full-time during the summer. Under these arrangements, both parents are responsible for child-rearing decisions.

Joint legal custody: The living arrangements of children under joint legal custody look exactly like sole custody with visitation rights. That is, the children live in one home and spend periods of time with the other parent. This arrangement is different in that both parents, rather than just the custodial parent, are responsible for child-rearing decisions. Nationwide, the vast majority of joint custody orders are for joint legal, not joint physical, custody.

In deciding what custody arrangement you think is best, you need to think about the relationship your children have with you and with your husband, as well as the relationship you have with your husband. If a judge decides your case, s/he will be looking at what is in the best interests of the children.

If you have been primarily responsible for the care of the children during the marriage, then sole custody would most likely permit you to continue in this role. If you and your husband have equally shared in the child-rearing, then some form of joint custody will come closest to continuing the pattern established during the marriage. The major study of joint physical custody has identified the following characteristics of parents as the best predictors of the ability to maintain joint custody over time:

1. The capacity to repress or suppress anger.
2. The capacity to problem solve.
3. The skills to manage and negotiate conflict.
4. A basic sense of self-esteem.
5. Some capacity for self-reflection and awareness of one's own part in the relationship with the former spouse.
6. Personal flexibility and the ability to relinquish control.
7. Basic trust and respect of the other parent.
8. The ability to tolerate minor differences in child-rearing.

See Steinman, Joint Custody: What We Know, What We Have Yet to Learn, and the Judicial and Legislative Implications, 16 U. Calif. Davis L. Rev. 739, 745-746 (1983). If you are considering joint physical custody you should seriously examine your relationship with your husband to evaluate if these factors are present. Also, if either of you is likely to leave the geographical area then joint physical custody will probably not work.

If you are not sure whether joint physical custody is a good idea for your children, you might want to know some of the results of studies of children in joint custody arrangements. These studies show mixed results, with some children doing well and others having problems. The only comprehensive studies of children in joint custody arrangements have been done by the Joint Custody Study Project, 1600 Scott Street, San Francisco, California 94115. You might wish to write to them for the results of their research.

Joint legal or joint physical custody will probably not be appropriate if your husband has been physically or emotionally abusive to you or the children, if your husband has participated so little in child-rearing that you do not believe he has a basis for adequately caring for or making decisions about the children, or if you have such serious disagreements with him concerning child-rearing that you do not believe the two of you would be able to make decisions together. Also, if you are concerned that your husband will at some time try to take the children away from you, joint custody will reduce the likelihood of your obtaining help from the authorities if your children are taken by him (see "Child Snatching").

If you believe you can discuss important child-rearing matters with your husband, then joint legal custody may be agreeable to you. Remember, however, that if the children are living with you then you will have the greatest information concerning their needs and development. You are in the best position to judge whether joint decision-making is feasible and in the children's best interests. Some of the decisions he may be able to participate in include where you and the children live, where the children go to school, how the children spend their summers and what kind of medical and psychological care the children receive.

Some research is beginning to show that joint custody awards often produce lower child support awards, even when one parent has physical custody of the child most of the time. Also, joint physical custody awards often contain no child support award, even if one parent has a substantially higher income than the other. This issue is being comprehensively addressed by the Child Support Project of the American Bar Association National Legal Resource Center for Child Advocacy and Protection, 1800 M Street, N.W., Washington, D.C. 20036. You may wish to write them for their publication on this subject which will be available in early 1985.

Agreeing that your husband will have custody: All women have been socialized to be mothers, and society expects mothers to put their children above everything else. Thus it can be difficult for a woman going through divorce who believes it is best for her and her children if their father assumes permanent custody. If you are in such a situation you may feel guilty or

feel that something is wrong with you. But you deserve support for your decision, and, if you are not getting enough of it, you can call or write your regional contact for Mothers Without Custody, a nationwide organization for mothers living apart from their children. The regional contacts are listed in Appendix I. (You should be aware that if you are the non-custodial parent you will probably have to pay child support.)

The Impact of Custody Disputes on Children

Any dispute concerning custody is emotionally difficult for all the people involved, including the children. You will have to make decisions about what to tell your children, when to talk with them, and how to address their needs throughout the process. Obviously, the age, maturity and individual characteristics of your children will affect your handling of these matters. You cannot control what your husband says to the children, even if you believe what he says is very destructive. You may be able to suggest that the two of you consult a professional you both trust concerning the best way to discuss the situation with the children. Unfortunately, if the animosity between you is too great, there is unlikely to be such cooperation.

There are legal ramifications to the judgments you make in these matters. At a trial, a judge will consider whether actions you have taken were in the best interests of your children. If you appear to be encouraging the children to disrespect or hate their father, this may be used against you, as it is generally not best for the children. This will put you in an especially difficult situation if specific factors exist such as violence against you, violence against the children, threats of child-snatching, or frequent harassment. A mental health professional may be able to help you make choices that will make the situation as easy as possible for your children, while your lawyer will help you understand the potential legal consequences of your decisions. In general, it is best for the children if neither parent tries to manipulate them and if the children are encouraged to understand that the divorce and/or custody dispute is not their fault.

Children usually benefit from having a relationship with both parents after a divorce. Quality relationships between each parent and the children can be maintained and encouraged regardless of the type of custody arrangement selected. (See "Thinking About Custody" for explanation of types of arrangements.)

Hiring a Lawyer

If you are getting divorced and you have children, you need a lawyer. A lawyer should understand what your rights and options are and will serve as your advocate in getting the best possible results. Without a lawyer you will have no way of knowing what you and your children may be entitled to, and you may make an agreement you later regret. If you appear without a lawyer in court you will be at a distinct disadvantage.

This handbook continually stresses the necessity for consultation with your attorney and for representation by a skilled and understanding attorney. Readers of an earlier draft of these materials uniformly noted the importance of selecting a good attorney and maintaining a good relationship with him/her. Retaining the right attorney may be the most important decision you make.

Hiring a lawyer for a contested custody case can be very expensive. Free lawyers through a legal services office are available to those who meet stringent income requirements (usually equivalent to the amount you would receive on public assistance) but cutbacks in the funding of such programs has greatly reduced the likelihood that, even if you qualify, a free lawyer will be available. Your local legal services or legal aid office should be able to tell you if there are any volunteer lawyers programs or any government-paid legal services available to you. Be certain to ask about this if you are turned down by a legal aid office.

Because men usually have more money available to them than do women, the high cost of lawyers works a greater hardship on women. Your lawyer may ultimately be able to obtain some of his/her fee from your husband, but neither you nor your lawyer can count on this, and so your lawyer will look to you to pay all of the legal bills. This may mean that you must borrow money from family or friends, or from a credit union or bank. Although this will be a hardship, it is a necessity; you need a strong advocate. Sometimes, although not usually, a lawyer can

obtain money for attorney's fees or costs from your husband while the case is pending. These are called "pendente lite" attorney's fees. Your lawyer would have to file a motion with the court and convince a judge to order such payment. These motions are by no means routinely granted, but if your husband has access to a lot of money and you have access to almost none, then you may make a convincing case. You should discuss this possibility with your attorney.

Not all lawyers charge the same fees. There are lawyers with sliding scales who will charge a different hourly rate based on your ability to pay, and there are those who will work out payment plans over time. It is best to get all of the details of the fee arrangement in writing so that there will be no misunderstanding later. Financial concerns will of course contribute to your decision concerning who represents you, but keep in mind that an attorney who does no preparation for trial, who does not research the legal issues pertinent in your case, and who does not avail him/herself of every opportunity to advocate on your behalf may produce results that are as bad as having no attorney at all. When you find a lawyer you like, try to discuss realistically with him/her what can be done to keep his/her fees as low as possible while still assuring adequate representation. Find out what you can do to keep your lawyer's hours to a minimum. For example, if you prepare a written summary of what each of your witnesses can say about you and your children, this might reduce the amount of time your lawyer needs to spend talking with them.

In evaluating a lawyer's expertise, you should look for someone familiar with family law and practice in general and child custody law and practice in particular. There are frequently new developments in these areas, and you need someone who keeps current on these issues. This handbook, in preparing you for a custody dispute, provides you with suggested questions to discuss with a lawyer in order to determine if s/he is the best person to represent you. Interview attorneys thoroughly. Ask them about their experience handling contested custody cases. Use the information in this handbook to help you determine which attorney is right for you. You may be assisted in finding the

right lawyer by calling your local Bar Association, talking with personnel at the local court which hears family matters, or talking with friends who have also been through contested custody disputes.

It is usually advisable to obtain an initial consultation with more than one lawyer. This will enable you to compare the interest and ability of each lawyer with respect to your case, as well as your feeling about each lawyer. If you are dissatisfied with a lawyer you consult, by all means see another one. It is very important that you develop a relationship of trust with your attorney. If you retain a lawyer and become dissatisfied, it is difficult to decide whether to switch lawyers, as your new lawyer will have to start over learning the details of your situation. The information in this handbook should be helpful to you in evaluating your attorney's work. Remember that your lawyer works for you and that, although his or her advice is crucial, you must feel that your lawyer is representing your wishes. You should expect to work with your attorney closely and should choose an attorney who welcomes a high level of cooperation. Take an active role in your case. While you must have respect for your attorney's judgment, you also need to be able to discuss your concerns, give your attorney useful reading material, and, ultimately, make the final decision on whether to settle, what the terms will be, or whether to go to trial. This does not mean you should be calling your lawyer several times a week, but that regular lines of communication should be open. You can assist in maintaining a good lawyer-client relationship by keeping your appointments and following through on your lawyer's instructions. Most people are intimidated to some extent by professionals who have expertise unavailable to the average lay person. If you feel intimidated by your lawyer, try to overcome it. The two of you need to be allies.

Many people are using mediation, sometimes effectively, as an alternative form of resolving disputes arising out of marriage and divorce. Mediation is the process of sitting down with your husband and one or two outside parties with the goal of reaching an agreement.

If you decide to try mediation (see "Mediation" section for a fuller discussion of the advantages and disadvantages), it should not be considered a substitute for hiring your own

lawyer. Even if you try to directly negotiate with your husband through mediation, your own lawyer is necessary to inform you of all your rights and options, and the consequences of possible decisions. You may have heard that mediation will save you money because you will not have to hire a lawyer. In fact, reaching an agreement through mediation can be as expensive as reaching an agreement negotiated by lawyers.

In mediation, no one represents you or serves as an advocate on your behalf. Also, no one explains your legal rights or all of the options available to you. The mediator is often not a lawyer, and even if s/he is, his/her role is to facilitate communication and an agreement between you and your husband, not to assure that your short and long term interests, or those of your children, are protected. If you have children and you are concerned about their future care and support as well as your own economic well-being, it is shortsighted and against your interests to enter mediation without a complete understanding of the legal and economic issues involved in every divorce.

You will need a lot of emotional support during this time, and it is not realistic to expect this to come principally from your attorney. You may find such support from other women who have been through contested custody cases, and you may be able to locate such women through Mothers Without Custody (see Appendix I) or through a local women's center or Commission on Women. If you cannot locate other women through these sources, you might try to develop a support group yourself by posting notices or placing announcements in places or publications which particularly reach women in your area.

Deciding to Separate:
Choices You Have to Make and Their Consequences

If you are still living with your husband but think you will soon be separating, this is the time to evaluate the decisions you have to make in light of their potential impact on a later custody dispute. It is always best to seek legal advice before you separate, so that you receive advice from the beginning about the consequences of your choices. These are some common decisions you may be facing.

Who Has the Right to Custody of the Children?

Both parents have equal rights to custody of their children until a court order establishes otherwise. That means that either of you can move with the children, enroll them in school, consent to medical care for them, etc. This is true even if you were never married to their father and even if you and the children have never lived with their father.

Since the father has a right to take the children wherever he wants, you need to consider whether he is likely to move out of the state with them. If you are concerned about this possibility, you probably will need to go to court immediately, demonstrate the basis for your belief, and try to obtain an order prohibiting him from leaving the state with them. (See "Child Snatching" for additional information.) If you are considering removing the children from the state, although you have a legal right to do so you should discuss the possible ramifications in advance with your attorney. (See "Moving Far Away.")

Who Moves Out?

Many couples agree initially on who will move out of the home and where the children will live. You are probably in the best position for a future custody dispute if your husband moves out and the children remain with you. If your husband is unwilling to move and if you anticipate a custody dispute immediately, you are in a more difficult position.

It is impossible to require a spouse who has done nothing wrong according to the law to move out of the home. You may be able to obtain a court order requiring your husband to move out if you have certain grounds for divorce against him or if he has been physically violent. Your lawyer will be able to tell you if this is a possibility. In most situations, however, you will have to move out if he refuses to do so.

Except under the most extraordinary circumstances, you are better off if you take your children when you leave. You may believe you need a short time to reflect upon the future direction of your life, but if your leave your children behind, even for a brief period, your husband may obtain a temporary custody order keeping the children with him. This may be especially difficult if you have been physically abused by your husband. (See "Battered Women" section.)

Even if your husband tells you that once you "get on your feet" he will give the children to you, this is not a binding promise, and you jeopardize your likelihood of gaining custody if you rely on such a statement. If you do plan to move out without the children for a temporary period, and your husband has stated that he is willing to give you custody after a certain period of time, you will best protect yourself by making a written agreement, before you leave the home, specifying the custody arrangements. This written agreement does not guarantee that you will ultimately have custody of the children, but it is better than relying on his word alone. Be sure to see a lawyer before signing any agreement.

You will probably be better off if you arrange for a new home for the children before you move, in an area with schools comparable to the ones your children have attended. If instead you move with them to a friend's or relative's, your "unstable" situation may cause a judge to consider giving temporary custody to your husband. This may pose a serious financial burden, as it requires that you be able to afford to set up a separate home while receiving no child support or other financial assistance. Again, early advice from a knowledgeable attorney can help in making the best decision.

Moving Far Away

You may not be planning to move far from your current home, but there are several reasons why a long distance move may seem attractive. You may have moved to your present home because of your husband's work and have no family or friends of your own there. You may have better employment or educational opportunities elsewhere. You may want to relocate to a less expensive area. You or your children may have been physically abused by your husband and want to get as far away from him as possible.

Whatever the reason, there are consequences to a long distance move, and you should consult an attorney before making plans. If your husband opposes the move and plans to ask for custody of the children, he is likely to argue that they should not be moved from the area they are used to and that you are not acting in their best interests because you are keeping them from regular contact with him. Your attorney will have to be prepared to argue that it is in the children's best interests for them to be with you, regardless of where you live. If you have been the primary caretaker of the children, your lawyer will have to try to convince the judge that the continuity of your care is more important than the continuity of their physical environment.

If you contemplate moving out-of-state, this has serious implications concerning which state -- your new one or the one your husband remains in -- has the power and right ("jurisdiction," in legal terminology) to decide who gets the custody of the children. You probably cannot move to a new state and file for custody there shortly after moving. If you, your husband and children have lived in one state for more than six months, that state may be the only one that has jurisdiction to hear your custody dispute unless you and the children have lived in the new state for six months, and no court action was filed by your husband first. Even if you and the children are no longer in the state, the court can issue a custody order. That means your husband can go to court and file for custody after you have moved and you will have to litigate the case in the state where he has remained.

Because questions concerning jurisdiction to hear a custody dispute and the possible impact of a long distance move are so complex, it is always advisable to see an attorney before you make any decision. If your lawyer is not an expert on matters of custody jurisdiction, s/he may wish to consult the most comprehensive source of information on this subject, Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law, available for $25.00 from the ABA National Legal Resource Center for Child Advocacy and Protection, 1800 M Street, N.W., Washington, D.C. 20036.

Informal Custody/Visitation Arrangements

It may not yet be clear whether you will face a contested custody dispute. You and your husband may be able to make a plan now for the children. The plan you make can have consequences if custody is later contested. Thus you should evaluate as well as you can the likelihood that there will be a dispute about custody later. This is one place where a lawyer cannot really help you, because you are in the best position to predict your husband's future actions, although it would be useful to discuss it with your lawyer.

If the chidren do well under the arrangements you and your husband establish now, it may be hard to change it later. That is why it may not be advisable to agree that he will have custody now, even if you think it is temporary, unless you are prepared to have that become the permanent arrangement. If the children live with you and visit with their father, it may be hard later to argue that it is in the children's best interests to spend less time with him. And if the children begin to spend roughly half of their time in each of your homes, you may find that even if you don't like how the arrangement works out, or even if you agree to it only to buy time and avoid an immediate dispute, the judge will give more weight to a few months of equal care than to what may have been years in which you were the children's primary caretaker.

This poses a serious dilemma. If you try to restrict your husband's time with the children because you believe his demands are unreasonable and not in the best interests of the children, it may appear that you are uncooperative and unsupportive of the father-child relationship. This may later

be grounds for awarding custody to the father. If, on the other hand, you give in to what you believe are unreasonable demands that are not in the long term best interests of the children, you then make it easier for the father to argue that the children are better off with him or under a joint physical custody arrangement. You need to consider what you believe to be the best arrangement for the children and then evaluate how a judge reviewing that arrangement is likely to respond to it. Once again it is best to talk over your individual situation with an attorney before establishing an informal custody/visitation agreement.

Taking a New Job or Going to School

Divorce often produces numerous changes in the lives of women. If you have been a full-time homemaker or if your income has been considered supplemental to that of your husband, you now are probably realizing that separation and divorce will require that you support yourself and your children as well. This may mean that you have to change jobs, work an additional job, and/or obtain training that will improve your future financial situation. These choices can also have an impact on a later custody dispute. If, for example, you begin to spend less time with your children, this may be used against you, even if you have a very good reason. If you pursue particularly ambitious educational plans, a judge may believe you will not have enough time with your children. If you need additional day-care for the children and this requires them to adjust to new people or new situations and this is difficult for them, their adjustment problems might be considered a poor reflection on you.

Naturally, if you don't pursue financial security for yourself and your children, this might also contribute to your losing custody. (See "Why Do Mothers Lose?" section.) In general, you should try to remain as available as possible to the children, and discuss the ramifications of employment and educational choices with your attorney.

Developing a New Relationship

You may be inclined to begin a new sexual relationship during this time. This can have serious consequences in a custody dispute. Although the law no longer says that a woman

who has an adulterous or non-marital sexual relationship automatically loses custody, some judges are still so biased against this behavior that they will deny a mother custody for this reason alone. Although a decision on this basis alone will probably be reversed by an appellate court, most judges can state their reasons in a way that makes it unlikely the decision will be reversed, even if adultery was the single determining factor. Before getting involved in a new relationship, ask your lawyer how it might affect your custody dispute. S/he will know how your local judges are likely to react and will therefore be able to discuss the likely consequences with you. In particular, if you are contemplating a sexual relationship with a woman, it would also be a good idea to contact an organization with expertise in lesbian mother custody cases. These organizations are listed in Appendix II. (See also "Lesbian Mothers" section.)

Update, April 1985

Under a case decided in January, 1985, it appears that, in Virginia, living with someone to whom you are not married can, by itself, make you an unfit parent and be the basis for losing custody. It may even be the basis for denying you visitation rights in your home.

Negotiating a Separation and Settlement Agreement

Most divorcing couples ultimately agree on financial and custody issues after a negotiating process. Very few custody cases are actually decided by a judge. Both parties negotiate, however, with the awareness of what could or is likely to happen in court. The more sure you are of what would happen on a particular point in court, the less interested you will be in trading something else away for that point. The less sure you are, the more willing you will be to give up other items for negotiation. The bargaining process is also affected by the emotional and financial ability of the parties to continue through a contested trial.

While the "tender years presumption" was in effect, custody was not a very significant part of the bargaining process because everybody knew that unless the mother was unfit she would get custody in court. (See the Introduction for further elaboration of the history of child custody standards.) The exception here would have been a mother who had a sexual relationship outside of marriage, since that was considered automatic unfitness in many places. Therefore, a mother in that situation, knowing her chances in court were weak, would be willing to trade other things to get custody.

Now that both parents come before the court on an equal footing, custody has become an important bargaining item. No matter how good a mother has been, it cannot be guaranteed that she will win custody. The "Why Do Mothers Lose?" section explains some of the reasons that even those mothers who have been primarily responsible for the children during the marriage are losing custody upon divorce. A mother who feels very strongly about keeping custody of her children is in a vulnerable position and is likely to bargain away certain financial aspects, such as property division, alimony, or even the amount of child support, in order to keep custody. How much a mother will bargain is likely to depend upon how strong she believes her case to be. To evaluate your position, get some guidance from a good attorney who is current on

developments in child custody cases. There are many women who were told by their lawyers that they couldn't lose custody, only to find that in fact they did! You need a lawyer who is realistic, aware of current trends and aware of local law and practice.

Some men who ask for custody of their chidren really want custody; others ask because they know this will lead toward a settlement agreement which is financially advantageous to them. You are in the best position to assess your husband's motives. Unfortunately, even if you believe your husband is financially motivated and that his case for custody is weak, you may still prefer a settlement agreement in which you give in on some financial issues over taking your chances in court. Remember, though, that custody can be changed later, but the financial settlement is more difficult to change. You can never be sure, no matter what the agreement says, that custody will not be reopened at a later date. (See "When Can Custody Be Changed?")

It is not fair that custody is bargained against the financial aspects of a settlement agreement. Provisions for the children are supposed to be based on their best interests. Property division and alimony, if applicable, are based on numerous factors, including need, relative economic positions, length of the marriage, contributions to the marriage, etc. Amount of child support is based upon each party's ability to contribute and the needs of the child. If, in order to avoid a contested custody trial, a mother accepts a smaller share of the property and a lower amount of child support, both she and the children are unfairly penalized. This is a very common occurrence, however. For example, a woman in Maryland who had been a full time homemaker for 20 years traded away her right to a share of her husband's civil service pension in order to avoid a hearing on the custody of her two minor children. In Michigan, a woman accepted one-fifth the amount of child support recommended by an independent arm of the court in exchange for an agreement that she would keep custody.

Although these results are not fair, they are the current reality with which many women facing divorce must grapple. When you are involved in a divorce you cannot change the whole

system and neither can your attorney. It is better to deal realistically with your options than to focus only on the unfairness.

A custody case can be settled by agreement at any time. That means you may begin the process of a contested custody dispute with a temporary custody and child support hearing, evaluations by mental health professionals, discovery and preparation of witnesses (see "Before the Trial"), and still reach an agreement before the case goes to trial. Sometimes the results of these pre-trial activities affect the willingness of one party or the other to negotiate on major issues.

A separation and settlement agreement can contain a variety of provisions related to the children besides those establishing custody and visitation. In fact, one advantage of reaching an agreement is that matters can be included which a judge is unlikely to resolve. For example, if you anticipate leaving the area, you will want to try to obtain a provision indicating that such a move will result in a renegotiation of the visitation arrangement but not in a change of custody. You can also include financial provisions concerning yearly increases in child support to keep pace with inflation, maintenance of health insurance or life insurance, and payment or extraordinary, unanticipated expenses (e.g., orthodonture, private tutoring), whereas a judge's order is likely to provide only for payment of a fixed amount of child support. If an agreement appears likely, you will want to discuss in detail with your attorney those provisions you would like to try to include.

An agreement with your husband concerning custody, even if it is written and signed by both of you, is <u>not</u> a court order. Only a court order grants the legally recognized right to custody of children. The agreement can be made part of your divorce decree or can be the basis of a separate order establishing custody. Be sure that, in addition to a signed agreement, you receive a certified copy of a court order, signed by a judge, determining custody of the children.

Standards Judges Use in Deciding Custody*

As between the mother and the father, judges apply a "best interests of the child" standard in deciding custody for the first time. This normally gives trial judges who hear custody cases an enormous amount of discretion. Some states have statutes which list specific factors for judges to consider to help them determine what is in the best interests of the child. In D.C., the judge must consider, in addition to all other relevant factors:

(1) the wishes of the child as to his or her custodian, where practicable,

(2) the wishes of the child's parent or parents as to the child's custody,

(3) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest,

(4) the child's adjustment to his or her home, school and community,

(5) the mental and physical health of all individuals involved. D.C. Code §16-914.

In Maryland, there is no statute setting forth criteria to be used, but case law here provides factors useful in determining the best interests of the child. Those are, "among other things, the fitness of the persons seeking custody, the

*Note: Legal authorities from which the information in this section was obtained, including statutes and cases, are listed in "References section."

adaptability of the prospective custodian to the task, the age, sex and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rational choice, the preference of the child." Hild v. Hild, 221 Md. 349, 357, 157 A.2d 442, 446 (1960).

In Virginia, the following criteria are to be used in determining the best interests of the child:

(a) the age and physical and mental condition of the child or children;

(b) the age and physical and mental condition of each parent;

(c) the relationship existing between each parent and each child;

(d) the needs of the child or children;

(e) the role which each parent has played, and will play in the future, in the upbringing and care of the child or children; and

(f) such other facts as are necessary to consider the best interests of the child or children. Va. Code §20-107.2.

Obviously, these factors are very general. They are designed to provide some guidance while still giving the judge a lot of discretion in reaching a decision. The case your lawyer presents will be structured, at least in part, around his/her position that after considering all of the factors pertinent to the best interests of the child, you are the preferred custodian. You cannot under any circumstances argue that you should have custody because you are their mother, as there is no longer any preference for the mother in D.C., Maryland or Virginia.

If you were never married to the father of your children, you should expect the court to apply the same standards it would apply if you had been married to him.

If there is already a custody order, perhaps entered at the time you were divorced, and you or the children's father wants to change it, there are additional factors which must be proven. (See "When Can Custody be Changed?")

Occasionally, someone other than the father of the children may want custody of the children. This is usually a grandparent or other relative, often after the child has been left in their care for a substantial period of time. A court will look at such a dispute somewhat differently from the way it looks at a dispute between the mother and father.

In D.C., the highest court has said that a parent has the strongest claim to custody and usually cannot be deprived of it unless she is declared unfit or unable to care for the child. The court will apply a best interest of the child standard, however, and if the child has been living in another home for many years it may be especially difficult for the mother to regain custody.

In Maryland, the court applies a best interest of the child standard, although it is presumed that the child's welfare will be best served in the custody of a parent, and the party opposing has the burden of proving to the contrary. The right of the parent to custody is not absolute, and may be forfeited if the parent is unfit or if exceptional circumstances exist making parental custody against the best interests of the child.

In Virginia, a fit parent with a suitable home has a right to custody superior to the rights of others. The non-parent seeking custody must meet the strict test of proving by "clear and convincing evidence" that the child's best interests will be met by awarding custody to someone other than the parent.

Before the Trial

It can take a long time for a custody case to finally be decided. Although courts in some states believe that children need custody matters settled very quickly and provide for speedy hearings, the courts in the Washington area do not work as quickly.

In the District of Columbia a temporary custody hearing can be scheduled within five weeks if the hearing is going to take less than 45 minutes, but if it will be longer it is postponed until a trial judge has time to hear it. The permanent custody hearing will probably not be held for 14 months.

In the nearby Maryland counties, it takes four to twelve weeks to obtain a temporary custody hearing and, again, if the hearing will take longer than a set period of time (usually no more than two hours), it will be rescheduled to a later date to be heard by a judge. The time period between a temporary custody and permanent custody hearing varies considerably, with estimates ranging from two months to three years.

In Northern Virginia, a temporary custody hearing may be scheduled within four weeks. A permanent custody hearing usually occurs more quickly than in Maryland or the District of Columbia, often within eight to twelve months.

During this time, you and your attorney will be preparing for the trial. This section will help you understand the choices to be made and what is desirable or necessary in preparing the strongest possible case.

Temporary Custody

There are usually two stages of court hearings on custody, one determining temporary custody (often called "pendente lite" custody, meaning "while the litigation is pending") and one

determining permanent custody. (Even permanent custody can be changed in a new proceeding. See "When Can Custody Be Changed?") Sometimes no temporary custody hearing is held and the parties simply agree that until the final hearing the children will live in a particular place. Although a temporary hearing is not necessary, the failure to obtain a court order awarding temporary custody means that both parents have equal rights to custody of the children. Therefore, even if the children have been living with you for a year following the separation, if you have no custody order and your husband takes the children or refuses to return them after visitation, you will be unable to get any help from the police, the sheriff, or any other governmental or court unit.

If the children are living with you it is a difficult judgment whether to seek a temporary custody order. Filing for temporary custody may precipitate a contested hearing, and you may lose. Failure to file, however, leaves you unprotected in the event your husband takes the children. Your goal should be to keep the children in your care for as long as possible prior to the permanent custody hearing. Be sure to discuss the temporary custody issue with your attorney and make a judgment with him/her whether to initiate a temporary custody hearing. If you need child support and are not receiving any, you will have to file for temporary custody in order to also file for temporary child support.

The outcome of a temporary custody hearing is very important. The longer the lapse between the temporary hearing and the final hearing, the more important the temporary hearing is. At the final hearing, the judge will give a lot of weight to the "status quo," i.e., the fact that the children are settled in one home, especially if they are doing well. Therefore, you and your attorney must be as well prepared for the temporary hearing as you would be for the final hearing. This means knowing in advance what points you want to make and what witnesses you need to make them, as well as knowing, to the extent possible, what points your husband will make and how you will answer them.

It is possible, of course, that you will lose at the temporary custody hearing. Then you will have an uphill fight to get permanent custody later. There are some steps you can

take, however, to maximize your chances. Most importantly, maintain close and frequent contact with your children. Establish the maximum visitation arrangements possible. Talk to them frequently on the telephone. If you have any difficulty exercising your visitation or speaking with your children, keep a written record of it.

Keep up with the children's school progress and after school activities. Make sure you are notified of PTA and other school meetings and of special events for parents at the school. Ask for a separate parent-teacher conference. You want to do all of those things which will permit you to argue at the permanent custody hearing that your bond with the children has not been weakened by your temporary separation from them. Also, if the children experience any difficulties living with their father, keep a written record of these problems and be able to corroborate your view of them.

Discovery: Learning About Your Husband's Case

The permanent custody hearing may be months or even more than a year after the temporary hearing. In the meantime, you are entitled to what the court calls "discovery."[2/] Discovery is the formal mechanism for getting information about your husband's case. The two main forms of discovery are interrogatories and depositions. Interrogatories are written questions sent to your husband which he must answer under oath. He has a certain number of days in which to answer the questions. This is an inexpensive form of discovery. It is very good for getting short factual answers, such as employment, salary, assets and names of witnesses; it is not the most effective means of learning the heart of his case for custody. This is because he has a lot of time and the

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[2/]Discovery is technically possible prior to the temporary custody hearing, although often the hearing will happen so quickly that there is not enough time to complete proper discovery. You and your lawyer will have to weigh the advantages of being better prepared for the temporary custody hearing against the disadvantages of delaying the hearing. In general, the less sure you are of what your husband and his witnesses will say the more important it is that you have discovery before the temporary custody hearing.

opportunity to consult with his lawyer before writing an answer, and because you have no immediate follow-up if you do not get enough information in his answer.

The more effective discovery tool for that purpose is a deposition. A deposition is an oral question and answer period, under oath, very much like testimony in court, conducted usually in a lawyer's office in the presence of a court reporter who records and transcribes everything that is said. Both lawyers are present during the deposition. A deposition not only gives you and your lawyer information about your husband's case, but it also gives your lawyer an opportunity to get a feel for your husband as a witness and to plan how to handle him in court. Because a deposition is taken under oath, it is perjury to give untrue answers, and statements made at a deposition may be used at the trial. Depositions can be very expensive, because you pay per page for the transcript made by the court reporter. Your attorney can estimate how much it will cost. Sometimes a deposition can be tape recorded, which can be less expensive. Also, if your attorney deposes your husband then his attorney will probably depose you. This is nothing to worry about, but it requires substantial preparation with your attorney.

You also have the opportunity, as part of discovery, to depose individuals who may testify for your husband. This can make discovery even more expensive, but it does let you and your lawyer know in advance what will be said in court so that there will be no surprises. You will have to weigh the benefits to be gained from deposing a specific individual versus the expense to you.

As part of discovery you can also obtain any written documents or records your husband has that may be helpful to you. If he has an appointment calendar that shows he often works in the evening and doesn't get home until the children are in bed, if he has a letter from his mother chastising him for inattention to the children, if he has cancelled checks or credit card bills demonstrating lavish personal expenses but he is less generous in meeting the needs of the children, if he has filed a separate tax return with irregularities that call into question his honesty and integrity, then he can be required to produce any of these relevant documents for review

by you and your attorney. Also, if he has any documents of yours which he kept at the time of the separation, such as photographs, letters, diaries, etc., he can be required to produce them.

Court-Ordered Home Investigations

Before the permanent custody hearing, there may be a court ordered investigation of you, your husband and your children. Normally, in the courts in the D.C. metropolitan area, one party must request a court investigation and a judge decides whether to order one. You should discuss this possibility fully with your attorney to determine whether an investigation is likely to strengthen your case.

Mental health professionals are often very important in a custody case. A mental health professional can give the judge an opinion about the child's needs and the parent's ability to meet those needs, as well as about the quality and strength of the parent-child relationship. It is preferable to arrange for your own psychiatric or psychological testimony. (See "Mental Health Professionals.") This can be a substantial expense, however, and a court investigation, which is free, may be the only realistic possibility. If your husband is presenting a mental health expert to support his case, it may be crucial for you to present such a witness as well. In this area, as with discovery, funds available to finance custody litigation unfortunately contribute significantly to the outcome.

Your attorney should be familiar with the use of expert mental health testimony in custody cases. Only after a thorough discussion with him/her about the role of such testimony in your case will you be able to decide how to proceed.

A court-ordered investigation will probably be done by somebody trained in social work who works for the court or other government agency. Sometimes a court psychologist will also interview and test the parents and the children, but this, or a psychiatric evaluation, is likely to occur only if specifically ordered by the judge or recommended by the investigator. The investigator will visit each parent's home and will talk with the children. Sometimes the investigator

will speak with babysitters, teachers, relatives and others. There is no control over who will be selected to do the investigation, and both the quality and biases of the investigators can vary considerably. For this reason, and because the recommendation of a court investigator usually carries substantial weight with a judge, the decision to request an investigation can only be made after careful consideration with your attorney of the possible consequences.

Preparing Your Case for Trial

Who Will Be Your Witnesses?

A well prepared custody case will include the testimony of witnesses who can corroborate your good relationship with your children and your concern and ability to provide for your children's well-being. People who are not your friends but who know you through a relationship with your children such as teachers, day-care workers, camp counselors are particularly useful. If such a person has had the opportunity to see you interact with your children, then he or she will be able to testify about that. Such people may be able to address your care and concern, testifying that you were the parent to attend parent-teacher conferences or PTA meetings or that you were the parent consulted about problems the children were encountering.

Your neighbors, co-workers, friends and relatives are also acceptable witnesses if they have seen you with your children. Such people can address issues such as how you express love to your children, how you discipline them, how you provide for their clothing, meals and cleanliness, and how they communicate with you. It is not usually very useful to rely on witnesses who know you but have not seen you with your children, as they cannot testify about those matters which will be of greatest concern to the judge. The exception to this rule will be if a witness has a specific fact to relate about you. One example would be a friend who gave a party you attended which you left upon being called by a babysitter and told your child was ill; that friend, even if she had never seen you with your child, could offer specific evidence of your behavior concerning your children. Also, if your character has been brought in question, you may want to bring in witnesses to refute whatever allegations your husband has made against you, even if those witnesses are not specifically familiar with your parenting.

Although friends and relatives are considered to be biased in your favor, they are often the people with the most significant evidence to offer and are therefore routinely used as witnesses. Every witness you present will be cross-examined by your husband's lawyer, and witnesses who are friends or relatives can expect questions designed to make them look as though they would slant their testimony in your favor. Your lawyer should prepare your witnesses for this type of cross-examination.

In general, cross-examination will try to minimize the damaging impact of each witness' testimony. It is important that your witnesses are truthful with your attorney and that your attorney thoroughly prepares each witness. A good attorney can anticipate likely cross-examination questions. Your attorney should never find her/himself in the position of learning, for the first time during cross-examination, facts that are damaging to you.

You are the Primary Witness

You are the most important witness on your side. The judge will listen most carefully to you and will pay attention to your demeanor as well as your words. Before trial you should go over with your attorney all the questions s/he will ask you, as well as likely cross-examination questions. If you are particularly nervous about testifying you may want to ask your attorney to have a practice session which includes answering cross-examination questions.

You want to persuade the judge that you are the better custodian for the children. To do this you must bring alive to the judge the relationship you have with your children. One way to do this is to tell the judge what a typical weekday and a typical weekend day are like in your house. Be specific about your involvement with your children. Talk about each child in detail, as this conveys how well you know your children. The judge will also want to know how you handle basic child-rearing matters such as discipline and religious or moral training. If your children do not participate in organized religion, be sure to present details concerning how you instill in them ethics and morality. The judge will also want to know about extended family relationships.

Be prepared to tell the judge why you think you should have custody of the children. Remember that the answer "because I'm their mother" is not appropriate. What is appropriate is to detail those mothering, nurturing functions you perform and tell the judge you will continue to do them and that you believe you are better than your husband at meeting the needs of your children. Be as specific as possible about the reasons you think you are a better custodian for the children than their father.

You will also have to tell the judge why you think your husband should not have custody. While it is appropriate to avoid unnecessary criticism or a statement that the father is unfit if he is not, it is important to detail his shortcomings with respect to his care of the children. Women often bend over backwards to be fair. One mother who lost custody refused to testify negatively about her ex-husband on matters that she believed were not of primary importance. She explictly stated that she did not want her son to later read a court transcript in which she said negative things about his father. As a result, however, the court order contains many references to negative statements about the mother made by the father, because he was happy to provide that testimony. You simply cannot afford to give a conclusory statement that your husband is a good father if in fact you have concerns about his ability to provide for the children.

If you have been the parent primarily responsible for caring for the children, be sure to convey that to the judge. One court has defined primary caretaking to include (1) preparing and planning of meals; (2) bathing, grooming and dressing; (3) purchasing, cleaning, and care of clothes; (4) medical, including nursing and trips to physicians; (5) arranging for social interaction among peers after school, i.e., transporting to friends' houses or, for example, to girl or boy scout meetings; (6) arranging alternative care, i.e., babysitting, day-care, etc.; (7) putting child to bed at night, attending to child in the middle of the night, waking child in the morning; (8) disciplining, i.e., teaching general manners and toilet training; (9) educating, i.e., religious, cultural, social, etc.; and (10) teaching elementary skills, i.e., reading, writing and arithmetic. Garska v. McCoy, 278 S.E.2d 363 (W.Va. 1981).

It would be useful for you to address each of these functions as well as the function of confidante. Your lawyer can then argue that the children should remain with the parent who has been the primary caretaking parent.

There are negative things that will be said about you during the trial. Your lawyer should hear about them first from you, long before you get into the courtroom. It is probably a good idea to volunteer to your lawyer all the worst things you imagine will come up. No one is perfect. If you are a normal mother you have made mistakes or you have failed to live up to expectations that others have. Will your mother-in-law say you were not sufficiently attentive because you did not pick up your infant children each time they cried? Will a neighbor testify that your children are permitted to use swear words? Have there been cockroaches in your house in part because dishes pile up in your sink? Does your husband disapprove that you permit your ten-year-old to come home for an hour after school to an empty house? Do you talk with your girlfriend on the phone for an hour when your children would rather have your undivided attention? Are there any instances of drug use, alcohol misuse, psychiatric care, sexual affairs, arrests, suicide threats, or other behavior that your husband will use against you? Tell your lawyer everything. Your failure to disclose information will make it harder for him/her to do a good job.

There are many other components of your testimony, depending on your individual situation. Your lawyer will plan your testimony with you.

Mental Health Professionals

The favorable testimony of a child psychiatrist, child psychologist or clinical social worker can be invaluable in a custody case. This testimony will be based upon a certain amount of time spent evaluating you and your children and possibly your husband. Sometimes standard psychological tests will be given and the results analyzed, and sometimes the evaluation will be based on conversation and observation alone. A mental health professional can give an expert opinion that the children are happy and well-adjusted with you, that you are a good parent, or that you have a good relationship

with your children. If s/he has evaluated your husband as well, then s/he can testify that you are the better parent and that the children will be better off with you.

Obviously, there is a risk in having the same mental health professional evaluate both you and your husband. After all, s/he might determine that the children would be better off with him. For this reason it is not uncommon for each party to produce his or her own expert witness and for each party to refuse to be evaluated by the other party's expert witness. You will have to make these decisions in consultation with your attorney. If your husband is planning to call a mental health professional as a witness on his behalf, you can find out who it will be through discovery. If finances permit, you can even do a deposition of that witness to find out in advance what s/he is planning to say. (See "Discovery" section.)

It is always better to have a mental health professional testify for you. It can, however, add substantial cost to the litigation. If you have health insurance that includes mental health care, inquire if any of the costs can be covered by insurance. Under some circumstances it is especially important to obtain this type of testimony. If there has been a question raised by your husband about your mental health or emotional stability, you need an expert mental health witness. If one or more of your children have unusual emotional needs that you feel you are better at addressing, you need an expert mental health witness. If your children are saying that they want to live with their father and you believe it is because they have been brainwashed or are afraid of him, you need an expert mental health witness. If the children have been living with their father and you want to prove that the home environment has been harmful to their development and/or that they still look to you as the parent primarily concerned with their well-being, you need an expert mental health witness.

If you absolutely cannot afford your own mental health witness, you will have to discuss with your lawyer the advisability of requesting a court-ordered home investigation. (See "Court-ordered Home Investigation" section.)

If you decide to seek a mental health evaluation for you and your children, be careful about whom you select. For example, a traditional, old-school psychiatrist who believes that children are generally better off with their mother is probably not a good choice because if s/he expresses that opinion in court the judge will likely disregard his/her testimony because the law does not permit the mother to be automatically favored. On the other hand, if the mental health professional is a man who has been through a divorce and feels bitter about his arrangements with his children, or if he otherwise tends to favor a male perspective in divorce, he might be less able to give you the positive evaluation you are hoping for. Many mental health professionals do have biases. If you are a lesbian, you do not want to see someone who believes homosexuality is a mental illness. If you are a battered woman, you do not want to see somebody who has a "blame the victim" approach to wife abuse. If you have always been employed you do not want to see someone who believes that mothers of young children should always remain at home.

Your lawyer can assist you in selecting a mental health expert. S/he may also be able to talk with that person before the evaluation, not with the goal of ensuring that the results will be positive, but with the goal of screening for the type of biases applicable in your particular situation which would make it less likely that you would receive a fair evaluation.

You also want to select someone whose credentials will be acceptable and impressive to the judge. Your lawyer will assist you in making this judgment.

Photographic Evidence

In addition to presenting the testimony of witnesses on your behalf, you can present tangible evidence to help persuade the judge. Your lawyer will know the rules concerning this sort of evidence, but photographs are particularly likely to be useful.

Photographs are often helpful in showing the judge the home you live in, the surrounding neighborhood, and any other things that are relevant but cannot be brought into court. It

may be especially persuasive if the photographs show not only the rooms but the children playing happily, perhaps with you as well.

Sometimes photographs are appropriate to illustrate reasons why your husband should not get custody. For example, if you or the children have been beaten by him, a photograph can demonstrate the extent of the injury. If he returned a child in a snowstorm with no coat on, a photograph can graphically show his lack of proper care.

Preparing for Cross-Examination of Your Husband's Witnesses

Hopefully, you have obtained a deposition of your husband which will tell you and your lawyer what to expect from his testimony. (See "Discovery" section.) By knowing what he will say you can provide your lawyer with the information s/he needs to prepare an effective cross-examination. For example, suppose your husband has said that one of his complaints about you is that you do not supervise the children closely enough on the playground. Cross-examination can bring out that the children have never been injured while playing under your care. If you have not made this clear to your lawyer, s/he may be afraid to ask about it on cross-examination if s/he is worried that your husband will give an unfavorable answer. In general, your lawyer will not want to ask questions if s/he cannot anticipate the answer.

It is unlikely that you will have enough funds to take depositions of all of your husband's witnesses. Through interrogatories to him or other pre-trial procedures, however, you can often learn the names, addresses and telephone numbers of his witnesses. (See "Discovery" section.) Go over this list carefully with your attorney to help him/her determine what the witnesses are likely to say. Your lawyer can arrange to have someone contact each witness and ask him or her questions about what s/he plans to say. The witnesses are not required to speak to your lawyer or his/her employee, but often will. Your husband's best friend or mother will probably be uncooperative, but neighbors, parents of your children's friends, and others less involved will often be willing to discuss what they know. This will help your lawyer prepare an

effective cross-examination. For anyone who will not discuss their testimony, it will be helpful to your lawyer if you prepare a short written statement explaining who the witness is and what you think s/he knows about you, your husband and your children, and any facts that may show the witness is biased or has incomplete knowledge.

The Trial

When the day of trial finally arrives you will of course be very nervous. Your fate is now in the hands of a judge who has never met you or your children, and you are relying on your attorney to serve as your advocate.

The process of the trial is not always smooth. If you are prepared for this it might be somewhat less unnerving. You may be scheduled to begin at a certain time, but the judge may be delayed with other proceedings. The judge may have to take breaks in the middle to hear other short matters. It is even possible that if the case is not completed in the time allotted, the judge will not be able to finish hearing it until days or weeks later. The uncertainty of the timing will make it difficult to schedule your witnesses. You may feel very upset if your friends and other witnesses have to wait in court all day and then come back another day. And if your mental health expert comes to court, s/he will charge you for the time even if s/he has to come back another day to testify.

Your lawyer will do the best s/he can with these uncertainties. S/he also gets frustated by delays and rescheduling.

It is also possible that your husband will request a last-minute postponement of the trial. The judge may or may not grant it, but if s/he does, although this will be very unsettling, it is not an indication that the judge will do whatever your husband wants.

The party who presents witnesses first will be the party who filed the original court papers asking for custody. That party is called the plaintiff or petitioner. So if you filed first your witnesses will be heard first. If your husband filed first his witnesses will be heard first. The other party is called the defendant or respondent. The defendant presents his/her entire case after the plaintiff has finished. After the defendant is finished, the plaintiff has an opportunity to

present evidence solely to rebut something that came up in the defendant's case. Then each attorney can present a closing argument to the judge.

Every witness will be cross-examined by the opposing attorney. Cross-examination is a critical part of the trial. Cross-examination can uncover that the witness does not have sufficient information to support his/her testimony or that the witness has a particular bias. Cross-examination can point out the witness' limited knowledge. If, for example, none of your husband's witnesses knew him while your whole family was living together, they will be unable to say anything about what his parenting was like during that time.

Your witnesses will also be cross-examined, of course. Your lawyer should anticipate the kinds of questions they are likely to encounter and prepare them.

Some judges get very involved in custody trials, asking a lot of questions, taking notes, and otherwise showing interest. Others may appear disinterested. You may not be able to determine which way the judge is leaning.

There are many technicalities that form a part of any court hearing. The lawyers may object to certain questions or the admissibility of certain evidence. You should not expect to understand all the technical arguments, but if you ask your lawyer about them, s/he should try to explain them during a recess or after the proceedings are over.

If the children are old enough to express an opinion about their situation, the judge will probably listen to what they have to say although it is up to the judge to determine how much weight to give their statements. The children are not treated as witnesses, however, and they will probably talk to the judge in his or her chambers without you, your husband or even the lawyers present. Sometimes a court reporter will be there to make a record of what is said. It is best to discuss any concerns you have about your child talking to the judge with your attorney before the trial. This is because the judge might announce exactly how s/he wants to handle this (i.e., talking to children together rather than separately, talking to

them with lawyers present or without), and unless your attorney knows what you think is best, s/he will be unable to address the issue when it comes up in court.

Children who are almost adults, i.e., 16 or 17 years old, may be used as witnesses in the courtroom. The advisability of this varies with the individual child, and the judge's willingness to hear such testimony in open court varies with the individual judge. If you have a 16 or 17-year-old, be sure to discuss this possibility with your attorney.

Of all of the witnesses, only you and your husband have a right to be present during the entire trial. If one attorney requests it, witnesses are usually required to sit outside the courtroom so that their testimony will not be affected by what other witnesses say. It is probably a good idea for your attorney to make such a request.

The judge will pay attention to you not only when you testify but throughout the entire trial. Your attitude can affect the judge's decision. It is generally better to avoid exaggerated facial expressions and other obvious reactions to testimony. You should have paper and pen in front of you so that you can make notes of matters to discuss with your attorney. If you want your attorney to cover a particular point of cross-examination, write it down and speak to him/her quietly about it before cross-examination begins. It is usually a good idea to go over with your lawyer in advance how and when you can communicate with him/her during the trial.

How you, and to some extent, your witnesses are dressed will convey an image to the judge. Courtroom proceedings are generally conducted in a formal, business-like fashion, and you should be dressed accordingly. Your lawyer can advise you about appropriate attire for the courtroom.

You may or may not receive an immediate decision from the judge. Although judges usually announce their decisions in open court at the conclusion of the trial, the judge can take the case under advisement and issue a written ruling at a later date.

Why Do Mothers Lose?
Factors to Be Prepared For

If you have always been primarily responsible for the care of your children, it will probably come as a shock to you to realize that you may lose custody of them. You will be better prepared to make choices during the pre-trial period and to plan your case if you know some of the common reasons, stated or implied, that mothers lose custody. If any of these factors apply to your situation, you should fully discuss them with your lawyer and plan how to handle them if they come up. If your lawyer does not believe these factors are important there are two possible explanations. One is that s/he knows the local judges and knows for sure that the pertinent factor is not considered relevant. The other is that the lawyer is not up-to-date on custody trends and doesn't realize that women are losing custody for these reasons. You should discuss the factors in detail with your lawyer and you should be satisfied with your lawyer's understanding of the situation. If you are not, you might consider consulting another lawyer.

Insufficient Consideration of Primary Caretaking

In most families, the mother, even if she is also employed, is the primary caretaker of the children. While it might appear that, unless there is some serious deficiency in her care, this should be a strong factor in her favor, often this is not the case. There are many cases where primary caretaker mothers have lost custody of their children. If you believe you should have custody because "I'm their mother," what you probably mean is that you have performed those primary caretaker duties. You will want to make it very clear to the judge that this has been your role, so that your attorney can argue that continuity of care is best for the children.

There is an increasing number of court decisions recognizing the significance of primary caretaking, but none of them are in D.C., Maryland or Virginia. Your attorney may want to become familiar with key cases in other states in preparation for arguing that this factor should be weighed

heavily in your favor. A publication entitled Representing Primary Caretaker Parents in Custody Disputes: A Manual for Attorneys is available from the Women's Legal Defense Fund and may be helpful to your attorney, as it provides cases, legal arguments, sample deposition questions and a list of related readings which will facilitate a strong argument that you should be awarded custody at least in part because you were the children's primary caretaker.

Working Mothers

Most mothers are employed outside the home. Even if a mother has been a full-time homemaker while her marriage was intact, it is almost certain that she has had to get a job around the time of the separation. In spite of this reality, some judges will apply a double standard to their evaluation of a mother's employment and a father's employment. After all, men are expected to be working, and a judge is not likely to think a man is less of a father because he has a job. But judges do not necessarily expect dedicated mothers to be working outside the home and may feel that you place your work above your children and that you therefore should not get custody. The same judge is unlikely to have that attitude about a father's work.

If, in fact, you are and always have been primarily responsible for the care of your children, even though you have been employed, you should be sure to develop a case that demonstrates this. For example, if you have made appointments and taken the children to the doctor, dentist, etc., if you stay home or leave work when the children are sick, if you know when the children need new shoes, if you help them with their homework, then you should be sure to develop these and other facts to prove your commitment, concern, and relationship with your children. Some judges are inclined to believe that, when the mother also works outside the home, then both parents are equally responsible for caring for the children.

Economic Status

Chances are you earn less than your husband. Discrimination, socialization and primary responsibility for children all contribute to women's lower economic status.

Although judges are supposed to award child support as a means of assuring that the children's needs will be met even if they live with the parent with less earning power, some judges will nevertheless consider the lifestyle the children would enjoy in each home in deciding custody. In favoring a house over an apartment or a live-in housekeeper over a day-care center, a judge is really taking financial factors and ability into account.

Additionally, if you receive public assistance you may confront judicial prejudice that children should not be raised in a welfare family because it does not teach them proper moral values or because it is likely they will remain on welfare all of their lives. Unfortunately, these biases can occur even if receipt of public assistance was necessitated by the father's failure to provide child support.

There are few things you can do about this situation, especially remembering that too much ambition will put you in the "working mothers" dilemma and extra training or an additional job will take you away from your children so much that it will look like you are not giving them proper care and direction. You can, however, be sure that you get child support as soon as possible after separation. If your husband won't agree to a sufficient amount, your lawyer can go to court. If there is a temporary custody hearing and you prevail, be sure to get child support at the same time. In one District of Columbia case, a mother who had never filed for child support lost custody in part because she had been on public assistance for a short period of time and she was not financially secure. The Court of Appeals in its opinion made it clear that she should have sought court-ordered support.

The amount of support courts order is usually pitifully low. Studies show it is usually far less than half the cost of raising the child, even though the father usually earns more than the mother. Your lawyer should be familiar with the latest arguments and theories which would produce higher support orders. If your lawyer would like additional information, s/he can contact the Women's Legal Defense Fund.

Father's Remarriage

It is not uncommon for a father to seek a change in custody after he remarries. Although remarriage alone is not a basis for changing custody, it is all too often one factor on which a judge will rely in giving custody to the father. Judges have been known to refer to a "more complete family unit" or to the father, stepmother and children as a family and the mother as a single parent. Men between the ages of 24 and 44 remarry 50% more frequently than do women. Therefore any preference for a two parent family is likely to work against the mother. Also, a judge may refer to the ability of the stepmother to perform the "motherly functions" as though women can interchangably serve as mothers to any particular set of children. These biases have occasionally been chastised by appellate courts, but more frequently, the discretion given to trial court judges permits them to take remarriage into account.

If you are in this situation your lawyer will have to stress your relationship with the children, their reliance on you for care and guidance, and their need for continuity and stability. S/he should also produce evidence of the extent (or lack thereof) of the father's interest in the children prior to his remarriage, and, if appropriate, s/he should be prepared to argue that it will really be the stepmother who takes care of the children and that a step-parent should not be preferred over a parent as a custodian. You may also consider finding a psychological expert witness familiar with this area who can testify that there is no basis for believing that children's interests are better served in a two-parent "reconstituted" family than in the family unit in which they have been living with their mother.

The Transitions of Divorce

The employment, educational plans, and living situation of women are more likely to change at the time of divorce than are those of men. This can create the appearance of uncertainty and instability. Chances are that your husband will simply continue at his present job and this makes his life appear more stable than yours. If the judge is inclined to be concerned about your transitions, you need to be especially attentive to demonstrating your continued ability to meet the needs of your

children, and how the transitions you have made have not been detrimental to the children. If changes you have made are a result of acts of your husband -- for example, if you have moved frequently to avoid his physical violence -- your attorney will need to stress how your "instability" was really the responsibility of your husband. (See "Battered Women" section.)

Sexual Behavior

Mothers still lose custody because they have sexual affairs outside of marriage, even though the law no longer makes this automatic. (See "Deciding to Separate: Developing a New Relationship" section.) Judges attitudes vary considerably on this point. If you have had or are having a sexual affair, your lawyer should argue that it should not be held against you unless the children knew about it and it has had some specific negative impact on them. If your care of the children remained the same, and/or if you only saw the other person when the children were visiting their father, these factors should be stressed. Frequently judges will believe that a sexual relationship demonstrates selfishness and lack of concern for the children even when the mother has continued to provide them with the same quality of care.

Custodial Parent Relocation

When both parents no longer live in the same geographical area, the ability of the children to have access to both parents is obviously affected. A child cannot spend every other weekend 1000 miles away. There are never any restrictions on the rights of a non-custodial parent to relocate. This is because the right of the parent and child to visit is the parent's right, not the child's right, and even if the child does not want the non-custodial parent to move it cannot be prevented. In fact, the children cannot force the non-custodial parent to visit them even if he lives nearby.

When a custodial parent wants to move, there are different ramifications. In some parts of the country, the custodial parent must go to court and get permission before moving to another state. Even if prior court approval is not required, the non-custodial parent can go to court and try to block the

move or even ask for a change of custody based on the anticipated move. The non-custodial parent usually objects on the basis that the children should not lose their regular contact with him.

The common reasons for a custodial mother to want to move are better employment opportunities, education, a need for support from her family of origin, and remarriage. There are examples in all of these instances of mothers who have been stopped from moving or have lost custody. In an Indiana case, a mother who followed local law and asked court permission to move to New York for a better job expected that the worst result would be that the court would say she could not move. In fact, her ex-husband, who had remarried, persuaded the court that instead he should be granted custody. Some courts have used a mother's desire for economic advancement as evidence that she is not sufficiently committed to being a good mother.

The law on this subject varies dramatically from state to state, and many state courts have not yet addressed the issue. In Maryland, a recent case upheld the right of a custodial mother to take her son to South Africa, the home of her fiance, for a limited period of time. The mother offered to permit the son to visit his father during all school holidays (77 days) and to pay one-half the cost of transportation. The court stated that moving was not by itself a sufficient change in circumstances to justify a change in custody. Jordan v. Jordan, 50 Md. App. 285, 439 A.2d 26 (1982).

If you plan to move out of the area, it is imperative that you discuss it with your lawyer well in advance, and make sure s/he is familiar with developing legal theories in this area. Your lawyer can also advise you about how to restructure visitation so that the father continues to have a reasonable amount of time with the children and can also make suggestions about how and when to discuss the matter with him.

Appealing the Decision

If you lose custody at trial you can appeal the decision to a higher court. Custody cases are hard to win on appeal, however, because in most cases the trial judge is given broad discretion to decide custody.

In the District of Columbia, trial court decisions are treated with great deference since the trial judge has had the opportunity to observe the parties and determine their suitability for custody. In order to win on appeal, the Court must be satisfied that there has been an "abuse of discretion." Trial judges are required to make written findings of fact and separate conclusions of law in order to provide a meaningful review for the Court of Appeals.

In Maryland, when the appeals court believes that the trial court's decision is founded upon sound legal principles and upon factual findings that are not clearly erroneous, the trial court's decision will be disturbed only if there has been a "clear abuse of discretion."

In Virginia, the trial court's determination of questions of fact on conflicting evidence will be permitted to stand unless plainly wrong or without evidence to support it.

In considering whether to appeal, you will have to consider the expense as well as the unlikelihood that you will prevail. You must pay not only for your lawyer but also for the transcript of the trial. This can be hundreds of dollars or more, depending upon how long the trial took. Also, it is not unusual for the appeal process to take more than a year.

*Note: Legal authorities from which the information in this section was obtained, including statutes and cases, are listed in the "References" section.

Pending the appeal, the judge's custody decision will probably go into effect. That means that the children will be living with their father until the appeal is decided. If the children were living with you before trial and the decision means they now must move, your lawyer should request, from the trial judge and/or the appeals court, a "stay" of the judge's decision. A stay means you can keep the children until the appeal is decided. A stay is not usually granted, but if it is in the middle of the school year or there are other special circumstances you may be successful.

There are strict time limits for filing an appeal. If you decide not to appeal you will not be able to change your mind later. You will, at a later date, be able to file a new proceeding to re-open and modify custody if you can show that there has been a change in circumstances. (See "When Can Custody Be Changed" section.) Sometimes it is difficult to judge whether to file an appeal or file sometime later for a custody modification. You should discuss both of these options with your attorney.

In the District of Columbia, you are entitled to appeal your case to the District of Columbia Court of Appeals. In Virginia, you do not have any right to appeal, and the Virginia Supreme Court must agree to hear your case before you can even make your arguments. Since the Virginia Supreme Court hears only a small fraction of those cases presented for appeal, your chance of being heard, let alone prevailing, is very slim. In Maryland, there are two appellate courts. The first appeal is to the Maryland Court of Special Appeals. If you are unsuccessful you can then ask the Maryland Court of Appeals to consider the case, but it is not required to hear it.

When Can Custody Be Changed?*

Whether you reach an agreement about custody or it is decided by a judge, the decision is never considered final. The non-custodial parent, whether father or mother, can go back to the court at a later date and ask for a change in custody ("modification"). It is not supposed to be easy to obtain a change in custody, because the courts favor stable arrangements for children. Therefore, the person seeking the custody change must show a change in circumstances in order to modify the original order. Specifically, below are the standards for ordering a change of custody in D.C., Maryland and Virginia.

In the District of Columbia, modification must be based on changed circumstances occurring after the divorce decree which were not contemplated by the parties at the time. Any change of circumstances must be substantial, and material to the child's welfare and best interests. The burden of proof that the changes are material falls upon the party seeking modification of the custody order.

In Maryland, there must be some strong reason affecting the child's welfare to justify a change in custody. A change in conditions must have occurred which affects the welfare of the child, and not of the parents, to justify a modification. The stability provided by continuing a successful relationship with a parent who has had daily contact with the child generally far outweighs any alleged advantage which might result due to a change in custody. When all goes well with children, stability, not change, is in their best interests.

In Virginia, the court may revise and alter a custody decree if a material change in condition and circumstances has

*Note: Legal authorities from which the information in this section was obtained, including statutes and cases, are listed in the "References" section.

occurred. The burden rests upon the party seeking to modify the decree to establish such a change by a "preponderance of the evidence."

A change in circumstances can be many different things. Poor school performance, adolescent problems, emotional difficulties may all be raised, even if the situation would have been the same -- or worse -- if the children had been living with the other parent. If a child actually goes to live with the other parent, even if it was to be temporary, that might be enough of a change in circumstances. Some specific factors that have resulted in custody changes, such as a desire of the custodial parent to relocate or the father's remarriage, are discussed in detail in the "Why Do Mothers Lose?" section.

In spite of the legal standard, some judges will change custody based on their belief that such a change is in the best interests of the child, without really applying the substantial change in circumstances standard strictly. Thus, no one should believe that the settlement agreement or first court adjudication is the final word on custody.

Special Topics

Battered Women

Nationwide, battering is a very serious problem. If you have been physically abused by your husband, there may be some special issues concerning custody which will apply to your situation. There may be a legal remedy for stopping the violence which also permits you to obtain temporary custody of your children. In the District of Columbia, for example, if you have been abused or threatened you can petition the Superior Court for a Civil Protection Order. This Order, in addition to requiring that the violence stop, can award you temporary custody of the children. The custody portion of the Order is valid for the term of the entire Order, usually one year. The Order probably cannot award you child support, however, so you need to file a separate action for permanent custody and support. The big advantage to you of using the CPO process is that hearings take place quickly, usually within a month.

If your husband has been violent to you but not to the children, his behavior will not automatically disqualify him from obtaining custody. In fact, abusive husbands often use disputes over custody and visitation to continue harassing behavior. Your attorney may want to make the following arguments to support denying custody to your husband because of his violence:

-- the attitude towards the mother, as demonstrated by the violence, will be conveyed to the children and is not in their best interests;

-- the message that violence is an acceptable form of behavior will be conveyed to the children and is not in their best interests;

-- children who have witnessed or been made aware of the violence are adversely affected by it even though they are not the targets of it;

-- violence against the mother frightens the chidren, and subjecting them to that fear, including the fear that the violence may be directed toward them, even if that never happens, is not in their best interests.

Unfortunately, your situation as a battered woman may create circumstances that adversely affect your chances of obtaining custody. You may have been required to leave your home, for example, in order to escape further violence. If you have left your children at home, you may be considered to have abandoned them, or a court may simply think it is best for them to stay in the family home, at least temporarily. If you lose temporary custody, however, you will have an especially difficult time at a permanent custody hearing many months later. (See "Temporary Custody" section.) Although a few states have laws which instruct judges in custody hearings not to penalize a mother who leaves her children in order to protect herself, there are no such laws in D.C., Maryland or Virginia. If you are in this situation you will want your case to be heard in court as soon as possible, and your lawyer should make it very clear why you had to leave your home.

If you obtain a Civil Protection Order in the District of Columbia, your husband can be ordered to move out of the house for the period of the Order, up to one year. If you have left the home to avoid violence and now want to obtain a CPO and temporary custody of your children, you will want to also request that your husband be required to vacate the home.

In Maryland, a temporary or permanent custody order can give you and the children the exclusive right to live in the family home for up to three years. Thus, if you left to avoid the violence and would like a court order to permit you to return home and require your husband to leave, you should discuss this process with your attorney. Some judges are reluctant to order a man out of his home, and you will have to prepare a strong case that stresses the best interests of the children and proves the violence against you. Your lawyer will have to be prepared for the possibility that your husband may ask for custody himself and/or dispute that he was physically violent towards you. If you have any witnesses, pictures or medical records, discuss these with your attorney.

The plight of a battered woman can produce situations of uncertainty and instability. If your children are living with you at a shelter or at the home of a friend or relative, the judge may believe that the transitory nature of the situation is not best for the children. If you have been harassed by your husband at your workplace and been fired or forced to change jobs, your unstable employment record may be held against you. If you took the children to live in a new home and did not give your husband the address or provide him with access to the children because you were afraid of him and did not want to deal with him, this may be used against you as evidence that you want to deprive the children of contact with their father. Thus, if you are a battered woman and you think there is any possibility your husband will contest custody, you should find a lawyer as soon as possible who is familiar with and sympathetic to the situation of battered women. Your local battered women's shelter may be able to assist you in finding such a lawyer. The lawyer may have to explain potentially damaging circumstances as the result of your position as a victim of abuse. If you are considering leaving the state in order to escape the violence, you should consult an attorney before leaving and find one immediately in the new state. The consequences of leaving the state can be serious, and you need an attorney familiar with the laws concerning custody "jurisdiction." (See "Moving Far Away.")

Even if you are awarded custody, it is overwhelmingly likely that your husband will be awarded visitation rights. You and your lawyer should discuss in advance a plan to submit to the judge which permits visitation to take place under circumstances which maximize your safety. For example, you may be able to take your children to the home of a relative or other third party and have them picked up and returned there by your husband. In the District of Columbia, visitation rights awarded as part of a Civil Protection Order should contain "appropriate restrictions to protect the safety of the complainant." Certainly your lawyer can argue that in the permanent custody and visitation order there should also be appropriate restrictions to protect your safety.

If you believe you need to curtail all visitation by your husband, you will have to convince the judge that it is not in the best interests of the children to see their father. This

is such an extreme determination that it is almost never done. In almost all instances, the father's right to visit will be found to outweigh your own need for peace of mind and freedom from harassment. Even asking for a denial of visitation may make the judge angry. It is almost certain that if you seek to deny visitation completely you will need an expert mental health professional to testify that requiring visitation would be harmful to the children.

Mediation

Mediation is a process in which you and your husband have a number of sessions with one or two third parties who encourage you to communicate with each other and reach an agreement on all disputed matters. Mediation should never be a substitute for hiring your own lawyer, but it changes his/her role from one of negotiator on your behalf to one of adviser to you prior to and after the mediation sessions (see "Hiring a Lawyer").

Some people like mediation because they want and expect to continue a civil, even amicable, relationship with their spouse after the divorce and believe that the presence of additional intermediaries, such as lawyers negotiating on their behalf, will hinder this process. Also, mediation can provide a good forum for two people who are reasonably equal in their ability to articulate and who are in reasonably equal power positions to work out an agreement.

Mediation is not, by definition, an alternative to decisions made in court hearings; it is an alternative to negotiations between the two lawyers, each serving as an advocate for his/her client, trying to find terms both parties will agree to. If either mediation or negotiation fails to produce an agreement, a court hearing will be held. In fact, most cases with lawyers on both sides are settled by agreement and a contested court hearing is never held. If you are thinking about using mediation, there are several factors you should keep in mind in deciding whether it is right for you.

The process of mediation contains no formal procedure for getting information about your husband. Discovery (see "Discovery" section) only takes place when a case is pending in

court. Through discovery, your husband must answer questions under oath. If he lies he has committed perjury. In a deposition you can ask him, for example, if he plans to move out of the area, if he plans to remarry, if he is being promoted or taking a new job and what his responsibilities will be. In a mediation session there are no legal penalties for not telling the truth. He can also fail to disclose important financial information. Your divorce will settle not only custody but all the economic matters arising out of your marriage. In discovery he has to disclose all of his assets, detail his expenses, and provide written documentation, and his failure to be truthful can be punished. The mediator may ask for this information but can impose no penalty if he withholds anything or if he lies. If you believe your husband is unlikely to tell the whole truth, then mediation is not for you.

If you are easily intimidated by your husband, because you have been physically or emotionally abused by him or because he has always exerted the power in your relationship, or if you believe he can talk circles around you, you will probably be severely disadvantaged in the mediation sessions. Although some mediators may be skilled enough to recognize and try to compensate for these dynamics, that ability is by no means universal. If you are scared of your husband now you will be scared of him in mediation.

If you need immediate financial assistance, or if you are worried that your husband will remove the children from the area, mediation will not give you the immediate relief you need. If you have been receiving no child support, or inadequate child support, if your husband has stopped paying the mortgage or closed your joint bank account, and you enter mediation, you cannot expect the situation to change until a total agreement is reached. This will put unfair pressure on you to compromise on other matters such as custody and visitation, in order to get the immediate financial help you are entitled to. If you have a lawyer negotiating on your behalf, however, s/he can go to court for a temporary support order to help you out of your economic crisis. Then you can negotiate on a more equal basis.

It is not uncommon for a woman going through divorce to want the process to go as smoothly as possible, to want her husband to be as satisfied as possible, and to want to keep as much peace as possible for the sake of her children. A person with this kind of attitude is not likely to stand up for herself and her long-term needs. If you have these feelings, you need a clear understanding of your rights and your children's rights and of the long-term consequences of the matters under dispute. Your own lawyer is the only person who can provide this perspective.

There is no guarantee of confidentiality in a mediation session. That means that, if mediation fails, what you have said in an attempt to reach an agreement may actually be used against you. The mediator may say that the sessions are confidential, but if s/he is subpoenaed by your husband, s/he may be forced to testify, even if s/he does not want to. Anything you say to your attorney is, of course, confidential.

If you do enter mediation, be sure you also have a lawyer to advise you. Women have fought hard over the last few years to obtain meaningful economic relief at the time of divorce. A mediator cannot tell you about your rights to the property your husband owns in his own name or your entitlement to his pension. A mediator will not suggest a newly developing theory for determining the amount of child support. A mediator may have a bias in favor of joint custody and may make you feel defensive and unreasonable for resisting it, and s/he may have other biases that are not best for you or your children. Your lawyer's job is to serve your interests. You need someone knowledgeable in this role to provide you with information before you enter mediation and before you sign an agreement.

Finally, do not be afraid to admit that mediation is not working. If you believe the mediation process is heading you towards an agreement you will be satisfied with, that's fine. If it looks like a dead end, don't hesitate to quit.

Child Snatching

As long as there is no court order awarding custody to either parent, either parent is legally permitted to exercise control over the children's lives. That means either one can

pick up the child from school, move the child to a new home, or move the child to a new state. Of course, the other parent has the same right, and can bring the child back. The children, needless to say, become ping-pong balls in the process.

If you anticipate such a situation, you should go to court immediately to seek a custody order and an order keeping the child in the state pending the trial. Your lawyer will be able to explain the legal options available. If your children have already been removed, you will have to find them, but you should begin court proceedings to obtain a custody order even if you don't know where they are. Because your husband had a legal right to take the children, law enforcement agencies will not help you.

A legal right to take the children does not give a parent a right to seek a custody order anywhere. Neither parent can take the children to another state and expect to get a custody order from that state's court unless you fail to file for custody in your own state for six months. You must file within six months to curtail his ability to obtain a valid custody order in his new state. The laws concerning jurisdiction in custody cases -- that is the power of a particular court to issue a custody order -- are very complex. In almost every state they are governed by an act called the Uniform Child Custody Jurisdiction Act (UCCJA). Any time there has been or may be a move across state lines before either parent has legal custody, legal advice by someone familiar with the UCCJA is necessary.

Once there is a court order of custody, it is a crime in many states to take a child away from the custodial parent. Both Virginia and Maryland have such criminal laws, but the District of Columbia does not. If you have a custody order from a state with criminal laws concerning kidnapping by the non-custodial parent, and your child has been taken from you or not returned to you, you should file a criminal complaint with the appropriate authorities.

There are situations in which children have been taken by the non-custodial parent and have disappeared for many years. The abducting parent may change the children's names and move from place to place. This is obviously an extreme situation,

but it does happen. It is more likely, however, that the abducting parent has gone somewhere where there are family, friends or a job. If your husband has a steady job and would have difficulty getting a new one, he is probably not going to disappear with the children. In evaluating your worries about child-snatching, consider his employment record and his family ties and anything else he would stand to lose. A long-time government employee with strong ties to his parents who live in the area is much less likely to abduct his children than a French citizen with family and job opportunities in France. You also need to evaluate his level of anger and other emotional factors which might lead to child-snatching.

If your child has been abducted by the other parent and you do not know where they are, in limited circumstances you may be able to get help from the Federal Parent Locator Service. Of the local jurisdictions, only Virginia currently makes this service available to locate abducted children. A court order is needed to obtain access to this system, and only a Commonwealth attorney, not a private attorney, can obtain that order for you. There is a $40.00 fee. The local Commonwealth attorneys are listed in the Government pages of the telephone book.

The Federal Parent Locator Service is a computerized search which utilizes Social Security numbers as its principle tool for finding absconding parents. The information in the computer may be twelve to eighteen months old, however, and is therefore unlikely to help if your child has recently been taken.

If you have a court order awarding joint custody, even if the children live with you, it may mean that if their father takes them you will be unable to get the same kind of help you would be entitled to under a sole custody order. If you are concerned about the possibility of child-snatching and the question of joint custody has come up, you should be certain to discuss the potential ramifications with your lawyer.

Child Sexual Abuse

The public is only recently becoming aware of the alarming incidence of sexual abuse of children in families. A pattern has emerged in custody cases indicating that when a mother alleges that the father has sexually abused the child it is assumed that she is fabricating and is motivated by animosity or vindictiveness toward the father. There are many examples of sexually abusive fathers who have obtained custody, of mothers being held in contempt of court for denying visitation to a sexually abusive father, and of unrestricted and unsupervised visitation being ordered. Often, the child is too young to provide credible testimony and has also been told never to tell what has taken place. Therefore, proof that the abuse occurred can be difficult. Judges who are reluctant to believe such abuse could occur, especially if the father otherwise appears to be quite respectable, may conclude that the charge of abuse was unfounded and may actually penalize the mother out of a belief that she made an improper allegation.

If you believe your child is being sexually abused by her/his father, you must find an attorney who will understand the need to assist you in developing as much concrete proof as possible. This proof can include medical evidence of vaginal redness, vaginal bleeding, or a broken hymen. Such evidence is probably best obtained from a hospital sexual abuse program, perhaps one connected with a children's hospital. Proof can also be developed through examination by a trained child psychologist assisted by the use of anatomically correct dolls or drawings, although the child may actually be required to demonstrate with such dolls in the presence of the judge.

In addition to obtaining a concerned and knowledgable attorney, it is a good idea for you to seek assistance from organizations in your area which address this issue. One place to start in finding such organizations is a rape crisis center or other anti-rape organization. Such groups often become involved in child sexual abuse issues. The National Center on Women and Family Law has materials available on Child Sexual Abuse and Custody/Visitation Disputes. You can write for these to NCOWFL, 799 Broadway, Room 402, New York, N.Y., 10003.

Lesbian Mothers

If you are a lesbian, you will face all of the problems addressed in this handbook and then some. You can expect society's prejudice against and fear of homosexuals -- homophobia -- to be a major part of your custody dispute. The judge may believe that you are mentally disturbed, that you will make your children grow up to be homosexuals, that your children will be stigmatized and ostracized, and that you will set a poor moral example for them and be unable to guide their "normal" development. In spite of this, lesbians have won custody of their children. In those cases where the lesbian mother has prevailed the judge has usually looked carefully to see if the mother's lesbianism was in fact having a negative effect on the child. If there was no negative effect, some judges have not considered lesbianism a basis for denying custody. When lesbian mothers lose, it is usually because the judge has simply assumed it is bad for a child to be raised in a lesbian home.

A number of factors will influence the likelihood that you will win or lose. These include whether the children have been living with you for a long period of time, whether you live with a lover, whether you have an open lesbian lifestyle, and whether there are any obvious strikes against their father (e.g., he is living with another woman; he travels half of every month; he is an alcoholic).

You want to stay out of court if at all possible. If you must go to court you will absolutely need an expert mental health professional to testify on your behalf and address the judge's concerns about the emotional well-being and development of the children. (See "Mental Health Professionals" section.) You also do not want your lesbianism to be the major focus of the trial; the major focus should be your relationship with your children and your ability to meet their needs.

You will need to find a lawyer who is either already knowledgeable about the special issues which arise in lesbian mother custody cases or who is willing to learn. There are excellent materials available on the subject, including law review articles, a litigation manual, and psychological studies and articles. The best single source of information is the

Lesbian Rights Project, 1370 Mission Street, San Francisco, California. You or your lawyer can also contact the Women's Legal Defense Fund. Some other organizations that can help you are listed in Appendix II. Please see update, page 66.

Economics of Divorce

A full explanation of the economic aspects of divorce is impossible in this handbook. Nonetheless the financial matters that will be resolved in your divorce are substantial and have serious long term consequences. This information will help you discuss these matters fully with your attorney. In general, divorce has disastrous economic consequences for women and children. A California study showed that one year after divorce the standard of living of men had increased 42% while the standard of living of women and children had decreased 73%! You want to do your best to minimize these problems for yourself.

Child Support

Whenever there is an award of custody there is usually an award of child support. The purpose of child support is simply to help provide for the support of the child. Amounts of support are notoriously low; they seldom cover half the cost of raising the child, even though the non-custodial parent usually has more money. One Colorado study showed that two-thirds of the child support orders were for a lower amount than the father paid for his monthly car loan payment.

To initiate the process of obtaining support, you will have to fill out a financial statement detailing your income and the expenses of you and your children. Your husband will have to do the same. These documents will form the basis of the support order and should be filled out very carefully in consultation with your lawyer. It is easy to forget a lot of routine expenses (i.e., haircuts, magazine subscriptions, over-the-counter medicines, presents you buy for others) which really add up. Be sure to include all of your childcare and babysitting expenses. Also be sure to fill out the forms according to your real need, not the actual expenses you may currently be incurring. Delays in court proceedings, during which you receive little or no support, may require you to live

below your needs because you simply do not have the money to spend. If your financial statement suggests that you can in fact live at the standard you have adjusted to, that standard may form the basis of your support award.

There is a built-in unfairness in the way child support is usually decided. Even if the father has a lot more money, the court rarely awards an amount of support that will let the children live as well with their mother as they would with their father. This becomes most apparent when the father remarries and has a new child and that child enjoys a lifestyle that is much better than the lifestyle of the children who are living with their mother. It is not uncommon for a mother and her children to barely make ends meet for the basics while the children from the second marriage enjoy family trips, summer camps, lavish entertainment, and substantial material possessions.

Some economists and lawyers are beginning to develop materials supporting higher support awards when the non-custodial parent has a significantly greater income. The Women's Legal Defense Fund keeps current on these developments and can assist your lawyer in developing his/her arguments.

Obtaining a child support order is only the first step. Less than half of all parents entitled to receive child support actually receive the entire amount owed to them. In some places (Baltimore County, Maryland, for example) full compliance is as low as 12%. When you obtain your support order you should discuss with your attorney all possible methods of enforcement. It is often best to have the payments made to the court, which will send them to you, rather than to you directly. In D.C., for example, if one payment to the court is missed and the payor works in the District of Columbia, the court can start proceedings to have the money automatically deducted from his paycheck. Many counties are in the process of revising procedures and prerequisites for obtaining automatic payroll deductions for child support. Ask your lawyer about the current status of this collection method.

You can file to have the payor held in contempt of court for non-payment, and he can be required to pay or face jail. As a practical matter, few people go to jail for failure

child support. The contempt process has many drawbacks as it can take months to have your case heard, you have to lose time from work to go to court, and you probably will need to hire a lawyer. Also, your ex-husband may take the opportunity to re-open the question of custody. If the payor lives out of state you will have an even harder time collecting the money owed.

Recently enacted federal legislation will soon improve enforcement of child support orders. Every state will be required to implement mandatory withholding of overdue child support from wages when payment is in arrears more than one month, whether or not you receive welfare (AFDC). Also, both state and federal income tax refunds will be able to be intercepted to offset support arrears. Information about these remedies and other provisions of the federal law will be available from your local Office of Child Support Enforcement (called "IV-D" office after the section of the federal statute which created them).

You may be assisted in determining what method of support enforcement to pursue by contacting your local Commission on women, the Women's Legal Defense Fund, or your local IV-D office. IV-D offices in the Washington metropolitan area are listed in Appendix III.

Alimony

Alimony payments are made for your own support. Although some people believe that women often get unfairly large sums of money in alimony, in fact alimony is only awarded in 14-17% of all cases and the average amount of alimony awarded in 1981 was $3,000 a year. Therefore, it is unlikely that alimony is even an issue in your case.

There are circumstances in which it is reasonable to expect some alimony to be awarded. If you worked to put your husband through school to develop his earning potential, and as a result postponed your own opportunities to increase your earnings ability, you may be able to get alimony for a period of time to allow you to go to school. If you were a full-time homemaker for many years and now must enter the job market for the first time, you may be able to get alimony for a period of

time to permit you to establish employment. If you are young enough to have minor children it is highly unlikely that you will be able to get permanent alimony; unless you have been married for a long time and are considered too old to meaningfully enter the job market, the courts will expect you to be able to "rehabilitate" yourself to economic self-sufficiency. If your children are pre-school age, you may receive alimony to permit you to stay home, probably part-time, and care for them. You cannot count on this, however, and usually the amount you receive will not be enough to enable you to stay out of the job market. If your husband is very wealthy and throughout your marriage you have been a full-time homemaker, it is more likely you will be able to receive alimony to permit you to stay home with your pre-school children.

Be sure to ask your lawyer to be realistic with you about your chances of obtaining any alimony and how much you would be likely to get. Also, if you have a strong argument for receiving alimony, be prepared to find that your husband makes this a major negotiating point when you try to reach an agreement about custody. (See "Negotiating a Separation and Settlement Agreement" section.)

Property

If you and/or your husband have accumulated any property -- a home, savings, a car, furniture, savings bonds, stocks, etc. -- your respective rights to the property will be settled at the time of the divorce. Usually, property owned by one person before the marriage will belong to that person free of any claim by the other spouse. The same is usually true of inherited property. Both parties have an interest in "marital" property, however, and, depending on the state law, either the property will be divided between the two parties or an amount of money can be awarded to one party to compensate him/her for his/her interest in the marital property. A judge will consider many factors before deciding what kind of property award to make. Your lawyer will be able to advise you fully about your property rights and what you can expect. Property can always be the subject of negotiation.

If your husband will be entitled to receive a pension upon retirement, this can be a factor in your property settlement. The laws concerning pension rights and divorce are complex and vary not only from state to state but from one type of pension to another. Your lawyer should be knowledgable about this developing area of the law. You may also wish to purchase the Women's Legal Defense Fund pamphlet, "Your Pension Rights at Divorce: What Women Need to Know."

Women sometimes put their husbands through professional school only to find that the marriage dissolves at the completion of his education but before there has been the opportunity to accumulate any property as a result of his position. In some parts of the country, women have been able to obtain a sum of money under the theory that the professional degree was marital property in which she had an interest. This is a very novel theory which has not been accepted in many courts. If you are in such a position you will want to discuss with your lawyer how to present your situation to your best advantage.

If custody is contested and there is any possibility of reaching an agreement on custody that is favorable to you, it is unlikely you will be able to pursue novel theories concerning property rights.

Update, April 1985
Lesbian Mothers
(p. 61-62)

In January, 1985, the Virginia Supreme Court held that a homosexual living with a lover is an unfit parent as a matter of law. It also held that no visitation would be permitted in the home of the gay parent who was living with his lover. If you currently live in D.C. or Maryland, you certainly should not move to Virginia. If you are a lesbian in Virginia, this decision has devastating consequences for you. You should consult with a sympathetic attorney as soon as possible to consider all of your options.

Conclusion

The preparation of this handbook arose from many observations: analysis of custody determinations has revealed an alarming number of situations in which mothers who have been primarily responsible for the care of their children during the marriage have lost custody at the time of divorce for inappropriate reasons; women calling the Women's Legal Defense Fund after losing custody have reported problems with attorneys who were insufficiently prepared for custody trials, who did not explain the process, or who were not strong advocates; women calling before custody trials have almost uniformly displayed a misunderstanding of both the law governing custody disputes and the steps in the process. WLDF's review of existing literature revealed that there was no publication which could advise women facing contested custody cases about what to expect and what choices must be made: the law, the pre-trial steps, the process of negotiation, the trial itself, and, probably most importantly, how to select a good lawyer. This handbook should fill that gap.

The lack of available information has contributed to the feeling of each mother facing a custody dispute that she is the only person going through such turmoil. This handbook was written precisely because there are so many women in this situation.

Because laws and practices concerning child custody and related issues vary so greatly from state to state, there is no national resource you can turn to for specific advice about your situation. The resources listed in Appendix IV may be of further assistance to you.

Good luck!

References:
Case Law and Statutes in the District of Columbia, Maryland, and Virginia

Standards Judges Use in Deciding Custody
District of Columbia

District of Columbia Code §16-914.

Bazemore v. Davis, 394 A.2d 1377 (D.C. 1978)
Utley v. Utley, 364 A.2d 1167 (D.C. 1976)
Monacelli v. Monacelli, 296 A.2d 445 (D.C. 1972)
Lindau v. Lindau, 286 A.2d 864 (D.C. 1972)
In re West, 245 A.2d 636 (D.C. 1968)
Coles v. Coles, 204 A.2d 330 (D.C. 1964)
Dixon v. Dixon, 190 A.2d 652 (D.C. 1963)

Maryland

Hild v. Hild, 221 Md. 349, 157 A.2d 442 (1960)
McAndrew v. McAndrew, 39 Md. App. 1, 382 A.2d 1081 (1978)
Montgomery County Dept. of Social Services v. Sanders, 38 Md. App. 406, 381 A.2d 1154 (1977)
Davis v. Davis, 280 Md. 119, 372 A.2d 231 (1977)

Virginia

Virginia Code §20-107.2

Leisge v. Leisge, 223 Va. 688, 292 S.E.2d 352 (1982)
Durrette v. Durrette, 223 Va. 328, 288 S.E.2d 432 (1982)
Brown v. Brown, 218 Va. 196, 237 S.E.2d 89 (1977)

Appealing the Decision
District of Columbia

Fitzgerald v. Fitzgerald, 464 A.2d 110 (D.C. 1983)
O'Meara v. O'Meara, 355 A.2d 561 (D.C. 1976)
Dorsett v. Dorsett, 281 A.2d 290 (D.C. 1971)
Coles v. Coles, 204 A.2d 330 (D.C. 1964)
Superior Court Domestic Relations Rule 52(a)

Maryland

Davis v. Davis, 280 Md. 119, 372 A.2d 231 (1977)
Ross v. Hoffman, 280 Md. 172, 372 A.2d 582 (1977)

Md. Rules 886 and 1086

Virginia

Carpenter v. Carpenter, 220 Va. 299, 257 S.E.2d 845 (1979)
Mundy v. Hesson, 215 Va. 386, 209 S.E.2d 917 (1974)

When Can Custody Be Changed
District of Columbia

Rice v. Rice, 415 A.2d 1378 (D.C. 1980)
Tennyson v. Tennyson, 381 A.2d 264 (D.C. 1977)
McGehee v. Maxfield, 256 A.2d 576 (D.C. 1969)
Hamilton v. Hamilton, 247 A.2d 421 (D.C. 1968)
Dawn v. Dawn, 90 U.S. App. D.C. 226, 194 F.2d 895 (1952)

Maryland

Jordan v. Jordan, 50 Md. App. 285, 439 A.2d 26 (1982)
Sartoph v. Sartoph, 31 Md. App. 58, 354 A.2d 467 (1976)

Virginia

Va. Code §20-108

Featherstone v. Brooks, 220 Va. 443, 258 S.E.2d 513 (1979)
Hammers v. Hammers, 216 Va. 30, 216 S.E.2d 20 (1975)
Campbell v. Campbell, 203 Va. 61, 122 S.E. 658 (1961)

Appendix I:
Regional Contacts for Mothers Without Custody

Region I	Phyllis Phillips Parlmont Pk. Apt. S 6-143 N. Billerica, MA 01862 617-667-5040	NY-PA-ME-NH-CT-VT-NJ RI-MA
Region II	Dottie Keville 422 11th St., S.E. Washington, D.C. 20003 202-547-5565	MD-VA-DE-TN-KY-NC W.VA-D.C.
Region III	Kathleen Cunningham 1761 N.W. 2nd St., Apt. C2 Deerfield Beach, FL 33441 305-421-1971	MS-AL-GA-SC-FL-LA
Region IV	Pat Walsh 118 E. Vallette Elmhurst, Ill. 60126 (312) 580-2128	MN-WI-MI-IA-IL-IN OH-MO
Region V	Cathy Knapp 3942 W. Alabama #6 Houston, TX 77027 713-840-1662	NE-CO-KS-NM-OK-TX-AR
Region VI	As of now, no Regional Director. Inquiries handled by Region VII, Betty Burnett until further notice.	MT-ID-WY-WA-OR-ND-SD
Region VII	Betty Burnett P.O. Box 8193 Emeryville, CA 94608 415-523-0296	CA-NV-UT-AZ
Region VIII	Sheila Brayman P.O. Box 602 Greenbelt, MD 20770 301-552-2319	AK-HI, Canada and International

Appendix II:
Organizations for Lesbian Mothers

Lesbian Mothers' National Defense Fund
P.O. Box 21567
Seattle, WA 98111
(206) 325-2643

Lesbian Rights Project
1370 Mission Street, 4th floor
San Francisco, CA 94103
(415) 621-0505

Custody Action for Lesbian Mothers
Room 1109
Western Savings Bank Building
Broad & Chestnut Streets
Philadelphia, PA 19107
(215) 732-2450

Lambda Legal Defense and Education Fund
132 W. 43rd Street
New York, NY 10036
(212) 944-9488

Appendix III:
IV-D Offices in the D.C. Metropolitan Area

WASHINGTON, D.C. -- $20.00 application fee for services

Office of Paternity and Child Support Enforcement
425 I Street, N.W.
Washington, D.C. 20001
724-8811

MARYLAND -- $20.00 application fee for services

PRINCE GEORGE'S COUNTY
Bureau of Support Enforcement
14750 Main Street
Upper Marlboro, Maryland
952-4927

MONTGOMERY COUNTY
Clerk of the Circuit Court
50 Courthouse Square
Rockville, Maryland 20850
251-7040

VIRGINIA -- No application fee for services

FAIRFAX COUNTY
Juvenile Court
4000 Chain Bridge Road
Fairfax, VA 22030
691-2495

ARLINGTON COUNTY
Juvenile Court, 3rd floor
1200 North Courthouse Road
Arlington, VA 22216
558-2763

ALEXANDRIA
Juvenile Court
520 King Street
Alexandria, VA 22314
838-4144

Appendix IV:
Where to Look for Further Information

Women's Legal Defense Fund (WLDF)
2000 P Street, N.W., Suite 400
Washington, D.C. 20036
(202) 887-0364

In addition to distributing this handbook, WLDF has available Representing Primary Caretaker Parents in Custody Disputes: A Manual for Attorneys and also publishes a quarterly newsletter which summarizes custody caes in which WLDF has been involved. Also, the staff of WLDF's National Project on Women and Child Custody is available to consult with attorneys concerning litigation strategies for individual cases.

National Center on Women and Family Law (NCOWFL)
799 Broadway, Room 402
New York, New York 10003
(212) 674-8200

NCOWFL publishes a newsletter The Women's Advocate, which frequently contains articles concerning custody disputes. NCOWFL also has information packets available on child custody in general and on joint custody, battered women and custody, child-snatching, economic factors in custody disputes and child sexual abuse and custody.

American Bar Association National Legal
Resource Center for Child Advocacy and Protection
1800 M Street, N.W.
Washington, D.C. 20036

This organization's projects on child support and child custody has produced publications for attorneys on interstate child custody disputes and on connections between child support and custody.

The following women's legal organizations may not specifically address child custody issues but may be useful in helping you locate local resources:

Equal Rights Advocates
1370 Mission Street, 4th floor
San Francisco, California 94103

N.O.W. Legal Defense & Education Fund
132 West 43rd Street
New York, New York 10036

Women's Law Project
112 South 16th Street, Suite 1012
Philadelphia, PA 19102

Northwest Women's Law Center
701 N.E. Northlake Way
Seattle, Washington 98105

Women's Legal Defense Fund

The Women's Legal Defense Fund is a non-profit membership organization dedicated to assisting women in their efforts to achieve equality under the law. For more than thirteen years, WLDF has been a place where women can go for help with legal problems that affect them as women. WLDF staff and volunteers work to redress inequality through litigation, public education, monitoring of agencies charged with enforcing anti-discrimination laws, and challenging laws and policies that discriminate against women.

For more information on other WLDF publications, on becoming a member or volunteering for WLDF, contact:

Women's Legal Defense Fund
2000 P Street, N.W., Suite 400
Washington, D.C. 20036
(202) 887-0364

Contributions to WLDF are tax-deductible.